OPEN LETTER ON THE NEED FOR JUDICIAL INDEPENDENCE

The California Judicial Code of Ethics prohibits sitting judges and commissioners from commenting on pending and impending matters. Accordingly, no currently active judicial officer is permitted to comment on the case of People of the State of California v. Brock Turner, which was presided over by Santa Clara Superior Court Judge Aaron Persky. However, this prohibition does not apply to retired judicial officers who no longer handle matters for the court. Because we are permitted to do so and believe that it is important that we express our views, we are writing to respond to the flurry of public and social media criticism of Judge Persky, which has led to the current effort to remove him from the bench.

Judicial independence is one of the core values of our democracy. It is based on the principle that each case should be decided on its particular facts and the applicable law rather than in response to political considerations or public opinion. It exists and thrives only when judges know that doing their job will not put their job at risk.

Judges cannot and should not be immune from criticism. To the contrary, robust public debate about cases that raise important issues is a good thing. Removal of a judge for illegal or unethical conduct may be appropriate. However, calls to remove a judge because of a decision, even a very unpopular one, when that judge exercised discretion permitted under the law, is an entirely different matter. The essence of judicial independence is that judges must be able to make decisions without fear of political repercussions.

We acknowledge and respect the deeply held views of those who disagree with Judge Persky's sentencing decision in the Turner case. The case presents serious questions about our society's treatment of crimes involving sexual assault and of criminal defendants from different socioeconomic backgrounds.

At the same time, the full record in the case shows that Judge Persky made his decision after considering all the evidence presented at trial, the statements of the victim and the defendant, and a detailed report from an experienced probation officer. The probation officer recommended essentially the sentence that was imposed, including the grant of probation.

It is clear to us that Judge Persky took the matter seriously. He read several lengthy excerpts from the victim's statement into the record at the sentencing hearing. He followed the proper procedure, and he explained the reasons for his decision in accordance with the applicable law. Judges acting in good faith routinely reach different decisions. No doubt there are many judges who disagree with Judge Persky's decision. The purpose of this letter is not to take sides as to whether the sentence was adequate or appropriate. Rather, we firmly believe that removing Judge Persky from office under these circumstances would set a dangerous precedent and be a serious threat to judicial independence.